

3188/13
App. F. IX-4

Previous References.

1950-51

CB

File No. 340-50

Serial Nos. 12

Later References.

GENERAL AND REVENUE SECRETARIAT

Serial Nos. 1010

Part B for 1950-51

SUBJECT

2.5 (Extension to States) Scheme - 1st & 2nd
Civil Recruitment Board - 3rd State.

Serial
No.Subject: INDIAN ADMINISTRATIVE SERVICE.CONSTITUTIONAL POSITION.

1) The constitutional position has been examined as instructed and the following remarks are offered for consideration:-

2) Under Article 312, Clause (1), Parliament may by law provide for the creation of one or more All-India Services common to the Union and the States and regulate the recruitment and the conditions of service of persons appointed to any such Service.

3) Under Clause (2) of the same Article, the services known at the commencement of the Constitution as the Indian Administrative Service and the Indian Police Service are deemed to be services created by Parliament under this Article.

4) These statutory provisions seem to imply that the jurisdiction of the Indian Administrative Service is extended to all the States in the Indian Union, and to contemplate the est. of a cadre of the I.A.S. in every State in the Union. If approved, legal advice may be taken as to whether this view is correct, and if not, whether it is constitutional to hold that it is open to a State, if it so chooses, to stand out of the Indian Administrative Service.

5) Subject to the examination of this constitutional point by the Law Department (and possibly by the Advocate-General, too) the following further remarks are made:-

6) Although the point has not been definitely raised or a ruling given in any of the previous dis-

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discussions or correspondence relating to the extension of the Indian Administrative Service Scheme to Mysore State, it seems to be fairly clear now that the I.A.S. is a Service common to Mysore as for other ~~part of the~~ State, and ^{that} while the exact manner of its extension to the State and other details may have to be fixed by discussion and negotiation, its ~~application~~ ^{jurisdiction} itself cannot be in any doubt. This view is reinforced by the fact that such concurrence as has been sought by the Government of India to the extension of the Scheme to the Mysore State is only in respect of the Particular Scheme which has been formulated and which was itself the result of joint discussions and negotiations between this Government and the Government of India and not in regard to the question whether I.A.S. should be extended to Mysore or not. It is only the manner in which ^{a cadre of the} I.A.S. is to be established and the necessary steps suitable in each case that may be the subject of discussion or negotiation.

There are other provisions in the Constitution which may have to be considered before taking a decision whether it would be advisable or appropriate to stand out of the I.A.S.

Under the administrative relations between the Union and the States, the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament ~~and any existing laws which apply in that State~~ and the executive power of the Union shall extend to the giving of such directions

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to a State as may appear to the Government of India to be necessary for that purpose. (Art. 256).

g) Under Article 257, Clause (1) the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

h) Under Article 371, notwithstanding anything in the Constitution, during a period of ten years from the commencement thereof or during such longer or shorter period as Parliament may by law provide in respect of any State, the Government of every State specified in Part B of the I Schedule shall be under the general control of and comply with such particular directions, if any, as may from time to time be given by the President.

ii) It is possible that any of these provisions of the Constitution may be invoked by the Government of India in aid of any proposal they may make to enforce the acceptance of the I.A.S. scheme by this Government.

iii) The Law Branch may be consulted for examining the provisions of the Constitution in this behalf and for advising finally as regards the correct ^{of the} constitutional position stated at para (4).



Chief Secy)

13) 8.9.50

14) The above seems to be a correct appraisal of the

9. A.S. Constitutional position.

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Constitutional position. The literature available to us, and to other part-S. States too, seems to be restricted to the field of the manner in which the I.A.S. Cadre may be constituted in States, by the strength of such initial Cadre, the method of selection, and other matters which are not specifically laid down yet, and which will be matters to be formulated in the form of rules re. under Art. 309 of the Constn.

For favouring remarks.

11/9

Law Secy (P)

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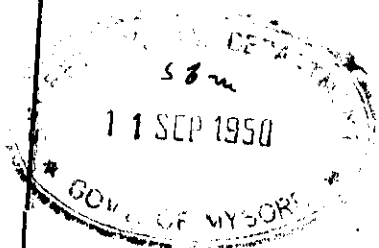
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~~of affd. the State~~ ~~as a first step~~ ~~for the~~ ~~benefit of~~

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The question for consideration is whether under the Constitution of India the jurisdiction of certain All-India services extends to all States and whether it contemplates the establishment of separate cadre of I.A.S. in every State and whether it is open to any

State to stand out from any such All-India Service (vide para 4 supra).

(7) Art.312(1) of the Constitution provides that notwithstanding anything in Part XI of the Constitution, if the Council of States has declared by resolution supported by not less than 2/3 members ^{present} and voting that it is necessary and expedient in the national interest so to do, the Parliament may, by law, provide for the creation of one or more All-India Services common to the Union and the States, and regulate the recruitment and the conditions of service and persons appointed to any such service. Under cl.(2) of the same Article the Services known at the commencement of the Constitution as the Indian Administrative Service and the Indian Police Service are deemed to be Services created by Parliament under this Article. It is seen from these provisions that the ambit of legislative and executive authority of the Centre and the State Governments are well defined and the executive authority of the States has to be so exercised as to secure respect for the laws of the Central Government, applicable to States. The Constitution, therefore, establishes an administrative nexus between the Union and the States. There are legislative and administrative nexuses both for the security and safety of the States and for securing uniformity and co-ordination in the matters of common interest and also for dealing with the inevitable disputes in certain matters in which more than one State is interested. "The dual polity which is inherent in a federal system is followed in all Federations by a dual service. In all Federations there is a Federal Civil Service and State Civil Service. The Indian

Federation, though a dual polity will have a dual Service but with one exception. It is recognised that in every country there are certain posts in its administrative set up which might be called strategic from the point of view of maintaining the standard of administration. It may not be easy to spot such posts in a large and complicated machinery of administration. But, there can be no doubt that the standard of the administration depends upon the calibre of the civil servants, who are appointed to those strategic posts. Fortunately for us, we have inherited from the past system of administration which is common to the whole of the country and we know what are these strategic posts. The Constitution provides that without depriving the States of their right to form their own Civil Services, there shall be an All-India Service recruited on an All-India basis with common qualifications, with uniform scale of pay and members of which alone could be appointed to these strategic posts throughout the Union." (vide Speech of Hon. Dr. Ambedkar - Constituent Assembly debates).

12) Even under the Government of India Act 1935, there was a statutory obligation imposed on the Provinces and States to secure respect for federal laws within their territories. ~~XXXXXXXXXX~~ Administration under the old Act covered three aspects: (vide Constitution of India by G.N. Joshi, page 259).

1) The prescribing of regulations, giving effect to the laws and activities of the federal Government and including the issue of explanatory

circulars and instructions.

2) The actual carrying out of laws and regulations on the spot by means of officials, and

3) The function of inspection.

As regards the British Indian Provinces three methods of Provincial or local administration of federal laws are prescribed:

1) In some matters the federal subjects are administered in Provinces by Federal Officers.

2) The Governor-General may with the consent of the Government of a Province entrust, either conditionally or unconditionally, to the Provincial Government or its officers, functions in relation to any matter to which the executive authority of the Federation extends.

3) The Federal Government may, by a Federal Act, confer powers and impose duties upon a Province or officers and authorities thereof.

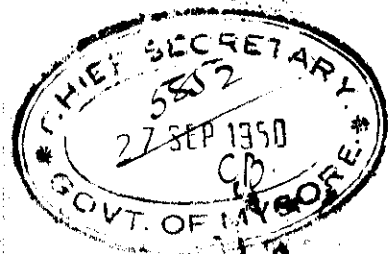
(4) As regards the States, firstly, the administration could with the Ruler's consent, be entrusted to Him or to His officers by the Governor-General. Secondly, the Federal Legislature could, by its Act, confer powers and impose duties on a State or upon officers and authorities thereof. Thirdly, the administration could be entrusted to the State under an agreement. Fourthly, if there is no reservation in the Instrument of Accession of the States, the Federal Government itself might administer the federal law in a State, by means of Federal officials under Federal Government's direct and exclusive control. It is seen, therefore, that even under the scheme of the

Government of India Act, the Provincial or State Executive Authority had to be so exercised as not to impede or prejudice the Federal Executive Authority. The impact of of this scheme could be seen in the Constitution of India also.

20) Part XI of the Constitution deals with the relation between the Union and the States. By this Part and the provisions of other Parts of the Constitution, the administrative and legislative authority has been very effectually centralised. In the first place, the distribution of subjects in Schedule VII has been altered chiefly by the transfer of many items from the State List to the Concurrent List. While Art.246 substantially reproduces the words of Sec.100 of the Government of India Act its scope is altered by changes in the Seventh Schedule. Secondly, Art.247 gives new power to Parliament to establish Special Courts and Art.248 gives residuary powers of legislation to the Parliament.

21) It is clear, therefore, that under the scheme of the Constitution the Centre has to administer certain functions directly or indirectly and the creation of certain Central All-India Services is a necessity recognised by the Constitution under Art.312. This Article authorises the creation of All-India Services and to that extent restricts the power of States to recruit its officers. The two Services specifically recognised by this Article are the I.A.S. and I.P.S. But any other All-India Service may be created by the Parliament provided that the Council of States has previously passed resolutions. This does not necessary contemplate separate cadre of I.A.S. as

stated in para 4 of the Notes supra, though, however,
this does not appear to deprive the State of its
right to form its own Civil Service.



49.9.50

Law Secy)

Chief Secy
Wk

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24) Submitted for perusal:

25) As instructed, the matter was discussed
with the Under Secy. Law with reference
to the last sentence in para 21. He
explained that the establishment of a particular
Cadre for each State as part of the
Central pool being a purely administrative
arrangement not specifically provided
for in the Constitution it may not be
correct to say that the Constitution contemplates

J. A. S. Constitutional point ^{31/10} _{C.A.}

Such a step. He said that there was no doubt whatsoever that the jurisdiction of the J. A. S. extended to the Mysore State by virtue of Art. 312, (1) and (2) and that it would be unconstitutional to stand out of the J. A. S.

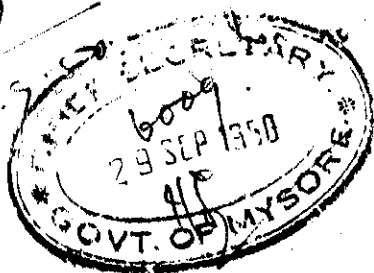
Chief Secy)

26) ~~20/11/50~~ ^{20/11/50}

27) For perusal.

A. H. S. S. S.

11/10
21/10/50



Office of the Chief Minister

No. 5007
Date of Receipt 3/10



This matter was referred to in the course of the discussion in Council yesterday. I have discussed the matter with the Ministry of States also. The recent session of the J. A. referred to this aspect prominently. We may address the Ministry of States in this regard pointing out that the matter is not the point of doubt and that it has been examined in all its hearings. A draft letter on the lines indicated orally yesterday may please be put up.

Kill 23/11/50

Copy of Const. pt.
to Secy. to Govt.
(H. H.)

11/10
23/11/50
(6.30pm.)
and
24/11/50

J.A.S (extension to state) scheme - Constitutional

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In the Home Branch and P.S. to H.H. &
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Confidential.

D r a f t)

D.O.

(My Dear Shri Menon,)

Subject: I.A.S. (Extension to States) Scheme -
Visit of the Special Recruitment Board to
Mysore State.

I am ~~desired to~~ refer to the discussions which ~~the~~ Chief Minister had with you during ^{his} recent visit to Delhi between 15th and 19th instant and ~~the~~ request that it may kindly be confirmed that the constitutional and legal aspects of the extension of the I.A.S. to Mysore State which were brought to your notice would be duly examined and the result communicated to this Government as early as practicable.

As you will have doubtless seen from the proceedings of the Mysore Legislative Assembly, the Constitutional aspects of the question were raised prominently and by more than one member. The position is not altogether free from doubt and while it may appear from the provisions of Article 312 of the Constitution that the jurisdiction of the I.A.S. over all States in the Indian Union is implied, this may not necessarily be so, and having regard to the fact that each State is free to organise and maintain its own Civil Service, it may even be possible that the establishment of a cadre of the I.A.S. may be found to be unnecessary ^{in a State} if there is sufficient justification for such a course and is warranted by circumstances.

In the meanwhile, there would be no objection to the Special Recruitment Board ~~to~~ visit ^{the} State on or about the 15th January 1951 for the purpose of selecting candidates. I ^{desire} ~~am~~, however, to refer to your definite assurance that the selection of candidates by the Special

Recruitment Board would be without prejudice to any decision that may be taken by the Government of India on the question of the extension of I.A.S. to the State which would remain open until such time as all the aspects of the scheme are fully discussed, and that there would be no commitment on the part of the Mysore Government with regard to the several detailed aspects of the I.A.S. Scheme. It is noted that, after the selections are over, no action would be taken by the Government of India in regard to the publication of the list of Officers selected or on any other matter connected with the extension of the I.A.S. Scheme to the Mysore State without prior consultation and discussion with the Government of Mysore. It is requested that this may kindly be confirmed.

An early reply is requested.

A copy of this letter is being sent to the Secretary, Special Recruitment Board and to the Secretary to the Government of India in Ministry of Home Affairs for information.

Yours sincerely,

11/8
25/11/50

Shri V.P. Menon,
Secretary to the Government
of India, Ministry of States,
New Delhi.

Sumit
25/11/50

Memo No.

Copy w/cs. forwarded to

1. The Secretary to S.R.B.
2. The Secretary to G.O.I.
Ministry of Home Affairs.
3. The Pri Secy to H. H. Mr. Maharaja

Sumit 25/11/50
A Chief Secretary to Govt.

24.11.50

23rd November 1960.

CONFIDENTIAL.

My Dear Sri Menon,

SUBJECT. - I.A.S. (Extension to States) Scheme -
Visit of the Special Recruitment Board to Mysore State.

...

I refer to the discussions which I had with you during my recent visit to Delhi between 15th and 19th instant and request that it may kindly be confirmed that the constitutional and legal aspects of the extension of the I.A.S. to Mysore State which were brought to your notice would be duly examined and the result communicated to this Government as early as practicable.

As you will have doubtless seen from the proceedings of the Mysore Legislative Assembly, the Constitutional aspects of the extension are raised prominently and more than one aspect.

The position is not altogether free from doubt and while it may emerge from the provisions of Article 315 of the Constitution that the jurisdiction of the I.A.S. over all States in the Indian Union is implied, this may not necessarily be so, and having regard to the fact that each State is free to organise and maintain its own Civil Service, it may even be possible that the establishment of a cadre of the I.A.S. may be found to be unnecessary in a State if there is sufficient justification for such a course and is warranted by circumstances.

In the meanwhile, there would be no objection to the Special Recruitment Board visiting the State on or about the 15th January 1961 for the purpose of selecting candidates. I desire, however, to refer to your definite assurance that the selection of candidates by the Special Recruitment Board would be without prejudice to any decision that may be taken by the Government of India on the question of the extension of I.A.S. to the State which would remain open until such time as all the

the aspects of the scheme are fully discussed, and that there would be no commitment on the part of the Mysore Government with regard to the several detailed aspects of the I.A.S. Scheme. It is noted that, after the selections are over, no action would be taken by the Government of India in regard to the publication of the list of officers selected or on any other matter connected with the extension of the I.A.S. Scheme to the Mysore State without prior consultation and discussion with the Government of Mysore. It is requested that this may kindly be confirmed.

An early reply is requested.

Yours sincerely,

Sd/- K.C. Reddy,

(K.C. Reddy).

SI V.P. VENKAT,
Secretary to the Government
of India, Ministry of States,
NEW DELHI.

Memo No.

Dated, Bangalore, the 28th November 1950.

Copy of the above is forwarded, with compliments, to the

(1) The Secretary to Spl. Recruitment Board, (2) the Secy. to G.O.I., Ministry of Home Affairs, and (3) the Private Secy. to H.H. the Maharaja of Mysore, Mysore, for information.

By Order,

Chief Secretary to Government.